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IN THE
COURT OF APPEALS OF INDIANA

PRISCILLA A. WALDRIP,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0603-EX-210
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and EMPLOYMENT PLUS, INC.,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Steven F. Bier, Chairperson, George H. Baker, Member and Sheri L. Clark, Member
Cause No. 05-R-2742

September 13, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Priscilla A. Waldrip appeals a decision of the Review Board of the Indiana Department of Workforce Development (the Review Board) denying her claim for unemployment benefits. Waldrip presents the following consolidated, restated issue for review: Did the Review Board err in determining that Waldrip's employer terminated her for just cause?

We affirm.

The facts favorable to the judgment are that on December 20, 2004, Waldrip completed a Pre-Application for Employment Plus, Inc., which asked, among other things, for her employment history, including her three most recent employers. Beginning with the most recent, following is the list provided by Waldrip, including the name of the employer, the date of employment, and the reason for leaving:

Lowes	Oct 21	to	_____	not enough hours
P.T.S. Electronics	Apr 1998	to	2001	got laide [sic] off
A.T.R. Coil Factory	1996	to	1998	They went to Mexico

Appellant's Appendix at 5. In fact, it was later discovered that Waldrip worked for a company called Cook Incorporated after she worked for P.T.S., and she worked for another company called Ken-Tech after Cook and before Lowe's. Employment Plus,

which supplied temporary workers for its clients, hired Waldrip and sent her to work at a company called Sabin.

Cook had a policy against persons being assigned to work in its facility if they had previously worked for Cook. As it turned out, Sabin was owned by Cook. Cook soon became aware of Waldrip's presence at Sabin and notified Employment Plus that Waldrip had worked at Cook before and that it would not allow her to continue working at Sabin. Employment Plus reviewed Waldrip's application and noticed, apparently for the first time, that there were gaps in the employment history Waldrip reported. When applicants fill out an application for Employment Plus, they are informed that the failure to complete the application accurately will result in discharge. Waldrip had been so informed. Because she had failed to accurately report her employment history, Employment Plus discharged Waldrip.

Waldrip subsequently applied for unemployment compensation, claiming that she had been discharged without just cause. Her application was approved on June 3, 2005, and Employment Plus appealed. On August 8, 2005, a hearing was conducted before an administrative law judge (ALJ), who reversed the original decision and held that Waldrip had been discharged for just cause and thus was ineligible for unemployment compensation. Waldrip appealed the ALJ's decision to the Review Board. On January 25, 2006, the Review Board summarily adopted the ALJ's findings and conclusions and affirmed his decision. Waldrip appeals that decision.

Waldrip contends the Review Board erred in concluding that her dismissal for filing an inaccurate employment application constituted termination for just cause, and thus claimed she was eligible for unemployment compensation benefits.

The Unemployment Compensation Act (the Act) provides benefits to people who are involuntarily out of work through no fault of their own. *Fuerst v. Review Bd. of Indiana Dep't of Workforce Dev.*, 823 N.E.2d 309 (Ind. Ct. App. 2005). Conversely, an unemployed claimant is ineligible for unemployment benefits if he or she is discharged for just cause pursuant to Ind. Code Ann. § 22-4-15-1 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006). Discharge for just cause includes "any breach of duty in connection with work which is reasonably owed an employer by an employee." I.C. § 22-4-15-1(d)(8).

According to the Act, "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." I.C. § 22-4-17-12(a) (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006). Where the decision is challenged as contrary to law, we engage in a two-part inquiry, including the "sufficiency of the facts found to sustain the decision" and the "sufficiency of the evidence to sustain the findings of facts." I.C. § 22-4-17-12(f). Pursuant to this standard, we are called upon to review: "(1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law." *McHugh v. Review Bd. of Indiana Dep't of Workforce Dev.*, 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

We review the Review Board's findings of basic fact utilizing the "substantial evidence" standard. *McHugh v. Review Bd. of Indiana Dep't of Workforce Dev.*, 842 N.E.2d 436. In so doing, we neither reweigh the evidence nor assess witness credibility, and consider only the evidence most favorable to the Review Board's findings. *Id*. Reversal is warranted only where there is no substantial evidence to support the findings. *Id*. Also, if the Review Board has drawn an inference from its findings of basic fact, we review that to insure it is reasonable. *Id*. Our final task is to review the conclusions of law in order to determine whether the Review Board correctly interpreted and applied the law. *Id*.

As indicated above, in Indiana, an unemployed claimant is ineligible for unemployment benefits if he or she is discharged for "just cause" within the meaning of I.C. § 22-4-15-1. Pursuant to the Act, "discharge for just cause" is defined to include "(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge [and] (2) knowing violation of a reasonable and uniformly enforced rule of an employer." I.C. § 22-4-15-1(d). The ALJ determined that Waldrip had falsified her application for employment – one of the specifically enumerated circumstances that constitutes just cause for terminating employment. Specifically, the ALJ concluded:

> In the instant case the evidence establishes that the claimant did not put the Ken-Tech employment down notwithstanding the fact that it clearly asked for her second most recent employer, which that would have been. The evidence establishes that that was a conscious decision on the claimant's part although she apparently didn't understand what second most recent

> employer meant. The evidence also establishes that she omitted her Cook employment, but that was inadvertent because she didn't remember it because of the short period for which she had worked there. The evidence does establish that the claimant left Ken-Tech off despite the fact that it asked for the second most recent employer and therefore the claimant did falsify the employment application.

Appellant's Appendix at 4.

Waldrip first contends that the reason cited by the ALJ as just cause for Waldrip's termination differs from the reason given by Employment Plus for terminating Waldrip. If true, this would be improper as the Review Board may not premise a finding of discharge for just cause upon grounds other than those relied upon by the employer. *See Butler v. Review Bd. of Indiana Dep't of Employment & Training Servs.*, 633 N.E.2d 310 (Ind. Ct. App. 1994). Employment Plus listed on the notice of appeal the following reason for Waldrip's discharge: "Claimant was discharged for violation of company policy[;] worked previously for company. Did not put this on application." *Exhibits*, Division Exhibit 2. Waldrip claims this differs from the actual reason for her termination, which was according to Waldrip:

> Cook Incorporated had "a policy of not allowing someone who has been employed there before to work for them if they voluntarily quit or were discharged," … that Cook notified Employment Plus that Waldrip had previously worked there and that they would no longer allow her to work there, and that Employment Plus fired her for that reason.

Appellant's Brief at 7 (internal citation omitted). In summary, Waldrip contends that she was fired because she had previously worked for Cook, and therefore could not work there again. This misstates the essence of Waldrip's termination. Employment Plus fired

Waldrip because Waldrip neglected to divulge *on her application* that she had previously worked for Cook. Therefore, the reason cited by the ALJ and affirmed by the Review Board for finding that Waldrip was terminated for just cause was the very same reason that Employment Plus gave for firing her.

Waldrip next claims the evidence does not support a finding that she quit or was discharged from her original employment with Cook. We presume this argument is related to the disqualifying condition set out in I.C. § 22-4-15-1(a) that claimants may not have either been discharged for just cause or voluntarily quit. Waldrip points out that she separated from employment with Cook the first time because the operation in which she was working moved to Mexico. Even if she is correct, such is irrelevant to the issues under consideration. The circumstances of her separation from employment impacting her claim for unemployment benefits are those relating to the separation from Employment Plus, *not* the original employment with Cook. As to her unsupported assertion in summarizing this argument that "[t]here [is] therefore no support in the record for Employment Plus' stated reason for discharge", that simply is not true. *Appellant's Brief* at 8.

Finally, we arrive at the crux of Waldrip's argument on appeal. She claims "even if Employment Plus did discharge Waldrip for falsifying her employment application, such a conclusion is not supported by substantial evidence and is not reasonable." *Id.* In essence, Waldrip contends that although she did in fact submit an inaccurate employment

application, the inaccuracies were the result of her misunderstanding the instructions, not an intention to deceive. In short, she argues,

> [t]here was no evidence and the ALJ made no findings that Waldrip purposely omitted any prior employment that she otherwise would not have been entitled to have. The statute does not say that turning in an employment application with false information on it is grounds for discharge. It says that the falsification has to be related to an effort to get employment through subterfuge.

Id. at 9. Citing cases from sister jurisdictions, Waldrip urges us to recognize the principle that falsification on an employment application does not supply just cause for discharge unless the information from the application was "material to the work." *Id*. at 13. *See Denberg v. Loretto Heights Coll.*, 694 P.2d 375 (Colo. Ct. App. 1984); *Casias v. The Indus. Comm'n*, 554 P.2d 1357 (Colo. Ct. App. 1976); *Roundtree v. Bd. Of Review*, 281 N.E.2d 360 (Ill. App. Ct. 1972); *Pouncil v. Kansas Employment Sec. Bd.*, 997 P.2d 715 (Kan. 2000); *Heitman v. Cronstroms Mfg., Inc.*, 401 N.W.2d 425 (Min Ct. App. 1987); *Matter of Rosedietcher*, 308 N.E.2d 686 (N.Y. 1974). In this particular case, that means we are asked to hold that if the inaccuracies and omissions on Waldrip's application were not intentional in nature and not motivated by a desire to gain employment, then they do not constitute "just cause" within the meaning of the Act for terminating her employment.

Even in light of the ALJ's, and thus the Review Board's, finding that the omission of her prior employment with Cook and Ken-Tech on the Employment Plus application was inadvertent, we cannot subscribe to the view that Waldrip urges upon us. First, we note that the list of reasons for "just cause" termination set out in I.C. § 22-4-15-1(d) is

not exclusive ("'Discharge for just cause' as used in this section is defined to include *but not be limited to* …"). (Emphasis supplied.) Thus, it is not necessarily the case that an inaccurate employment application supplies just cause for termination only if the inaccuracy was intentional and motivated by a desire to gain employment. Second, the Indiana cases cited by Waldrip in support of her position contain only one general requirement, viz., "the issue is whether the stated grounds for discharge have a basis in fact and constitute just cause." *Parkison v. James River Corp.*, 659 N.E.2d 690, 693 (Ind. Ct. App. 1996) (quoting *Voss v. Review Bd.*, 533 N.E.2d 1020, 1021 (Ind. Ct. App. 1989)). In the instant case, Employment Plus's stated reason for terminating Waldrip was her filing of an inaccurate employment application with Employment Plus. The ALJ found that Waldrip had indeed filed an inaccurate application, thus satisfying the threshold requirement set out in *Parkison* (i.e., that they have a basis in fact). There being no technical deficiency in the Review Board's ruling, we must now decide whether Waldrip's actions supplied just cause for her termination.

As noted above, Employment Plus was in the business of supplying workers for other business entities. As such, Employment Plus's ability to supply qualified, competent workers was the touchstone of its business. We cannot here speculate on the employment criteria of any or all of Employment Plus's clients, but we do know a qualifying requirement of at least one: Cook would not use workers who had previously worked for Cook. Employment Plus would not know a person had worked for Cook on previous occasions unless that information was provided on the employment application.

Without that information, Employment Plus might, as occurred here, assign an ineligible worker to work at Cook. The missing information was thus, on the facts of this particular case, material to Waldrip's suitability to work for Cook. In other words, the accuracy and completeness of the information applicants such as Waldrip provided on their employment applications was of significant importance to Employment Plus as an employer in its particular line of work. As the Appellee notes on appeal, the potential consequences of Waldrip's inaccurate employment application are not insignificant: "A client rejected an assigned worker, possibly resulting in loss of money, loss of face, and loss of a client." *Brief of the Appellee* at 8. On the facts of this case, submitting an inaccurate employment application constitutes just cause for termination.

To summarize, there was substantial evidence to support the Review Board's finding that Waldrip submitted an inaccurate application. *See McHugh v. Review Bd. of Indiana Dep't of Workforce Dev.*, 842 N.E.2d 436. Indeed, that fact was not disputed. Accepting as true the Review Board's finding that Waldrip's mistakes in completing the application were inadvertent, our final task is to review the Review Board's legal conclusion that discharging Waldrip for submitting an inaccurate application constituted a termination for just cause. For the reasons cited above, we hold that the Review Board correctly interpreted and applied the law in so ruling. *Id*. Thus, the termination was for just cause, and the denial of benefits is affirmed.

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.